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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 369.

JAMES I. WOOD,
Petitioner,

vs.

THE STATE OF GEORGIA,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Georgia.

BRIEF

For Respondent in Opposition.

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BRIEF

For Respondent in Opposition.

I.

OPINION BELOW.

The opinion of the Court of Appeals of Georgia, affirming petitioner's conviction on two counts, and reversing on one count, is reported below as **Wood v. State**, 103 Ga. App. 305, 119 S. E. 2d 261 (1961). The Supreme Court of Georgia, the highest state court, denied certiorari on May 22, 1961, without opinion. Motion for reconsideration was denied on June 8, 1961.

II.

JURISDICTION.

The jurisdiction of this Court is invoked by petitioner under 28 U. S. C. 1257 (3).

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The Constitutional and statutory provisions pertinent to this case are as follows: Ga. Constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann., Sec. 2-120); Ga. Code Ann., Sections 34-9907, 34-1907.1, 24-104, 24-105, 24-2813, 24-2804, 24-2814, 59-304, 18 U. S. C., Sections 401, 1504, 597. These provisions are set forth in an Appendix hereto.

IV.

QUESTION PRESENTED.

Whether a Georgia sheriff, an officer of court, sworn to execute all processes of the courts and to attend upon the grand jury, is denied constitutional rights of freedom of speech by a conviction of contempt based upon his having published, from his office in the same court house where a county grand jury was deliberating, statements calculated to discredit the Court's charge previously given and to obstruct, frustrate and impede an investigation which the grand jury was at that very time conducting.

V.

STATEMENT OF THE CASE.

Respondent does not accept as complete and accurate the Statement contained in the Petition for Certiorari.

On June 6, 1960, the beginning of the June Term of Bibb County Superior Court, one of the three judges of that Court delivered a charge to the Grand Jury just impaneled in which it was instructed to investigate charges relative to criminal violations of the voting laws. The charge pointed out that:

> "There are accusations that candidates for public office have paid large sums of money to certain leaders of the Negro in an effort to gain their favor and get the Negro vote. There are accusations that candidates and their supporters have paid, and these leaders of the Negroes have accepted, money for the purpose of influencing the Negro people to bloc vote for certain candidates."
>
> * * * * * * *
>
> "There are also accusations that certain Negro leaders after having met with a candidate and endorsed his candidacy have changed and supported an opposing candidate who put up a large sum of money. This creates an unhealthy, dangerous and unlawful situation."

The Court then instructed the jury with respect to Georgia Code Sections declaring it a crime to buy or sell votes (Sec. 34-9907) or to possess ballots or any likeness thereof (Sec. 34-1907.1).

The jury was directed specifically that,

> "Some questions which this Jury should have answered in your investigation of elections are: Was the Negro vote delivered in bloc to any candidate or candidates? If so, who delivered it and how was it

done? What contact did the candidates or their supporters have with the Negro group or its leaders? What money was involved, if any? How was the money used? What workers were employed? What promises did the candidate make, if any, in order to obtain the bloc vote?"

The Court then concluded by admonishing the jury as to the need for respect for the laws, and their enforcement against all violators. The grand jury was also instructed to consider the necessity for any additional laws or amendments to existing laws.

The next day, June 7, while the grand jury was considering these very matters given it in charge, petitioner, sheriff of Bibb County, released to local news media a press statement in which he accused the court of "persecution", "race agitation", a "crude attempt at judicial intimidation of Negro voters and leaders", and "political-legal action".

More specifically, petitioner charged that,

> "Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.
>
> It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the Negro people in this community.
>
> It seems incredible that all three of our Superior Court judges, who themselves hold high political office, are so politically naive as to actually believe that the Negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some Negro leaders.
>
> If anyone in the community be free of racial prejudice, it should be our judges. It is shocking to find

> a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office."

This press release was made in the sheriff's office located in the same Courthouse in which the grand jury was deliberating (R. 27), and was read by members of that jury during their deliberations thereon (R. 112).

The very next day, June 8, petitioner also delivered to the bailiff stationed at the entrance to the grand jury room, "An Open Letter to the Bibb County Grand Jury", in which the jury was in effect told that it was really the Bibb County Democratic Executive Committee which was guilty of corruption in the purchasing of votes.

Subsequently, the solicitor general of the circuit presented to another judge of Bibb Superior Court, an application for attachment for Contempt (R. 10) which, as later amended (R. 27), charged petitioner with contempt of court in two counts, Count I relating to the press release, and Count II relating to the "Open Letter". This petition was filed and rule nisi issued thereon on July 7. On July 8, petitioner released to the press and other news media, another statement in which he again repeated all his charges against the judges contained in his first statement. He concluded by saying that his charges were the truth, that he was being prosecuted for speaking the truth, and that the judges "want the satisfaction of finding me in contempt of court . . ."

Here again, at the same time this press release was made, the grand jury was still in session considering the matter, and the statement was also read by them (R. 112).

The application was again amended so as to add a third count charging petitioner with contempt in issuing this last statement.

As finally amended, the application for contempt charged that these actions of petitioner constituted "a

clear, present and imminent danger to the investigation being conducted", and that it was designed to "hinder, interfere with and ridicule the said grand jury in continuing its investigation . . ."

Petitioner filed demurrers (R. 42, 98) and response (R. 110). The application was heard on the pleadings and written stipulations (R. 111-115), following which the Court rendered judgment adjudging petitioner guilty of contempt on each count, and imposing a fine on each count of $200.00, and 20 days imprisonment, the latter to be served concurrently (R. 116). Although one defense raised by the response was "truth", petitioner made no offer to prove it at the hearing.

On writ of error to the Court of Appeals of Georgia, the conviction was affirmed on Counts I and III, relating to the two press releases, and reversed as to Count II, relating to the "Open Letter" delivered to the grand jury. **Wood v. State**, 103 Ga. App. 305, 119 S. E. 2d 261 (1961).

With respect to Count I, the Court of Appeals declared:

> "It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge."

As to Count III, the Court said:

> "When the defendant disseminated this accusatory statement to the public news media in an apparent effort to hamper the grand jury which was still considering the charges given it by the court, this conduct could properly be found by the court below to constitute a contempt."

VI.

ARGUMENT.

In view of several grossly misleading statements contained in the petition, respondent deems it important at the outset to state clearly what is and is not involved in this case.

To begin with, it is nothing less than demagoguery and a species of racial prejudice in reverse to say, as petitioner would have it, that, "The final decision in this case will determine whether or not state courts and grand juries may be used to intimidate Negro voters of southern states . . ." (Petition, p. 8). This is not a voting case. No Negro or anyone else has been deprived of any right to vote, or intimidated with respect to voting. Nor does it appear that petitioner has any standing to assert himself as a chosen champion of voting rights. The grand jury charge involved in this case was not directed to voters as such, but against corrupt political bosses who violate state laws by buying votes in the market place, a practice illegal under state law[1] as well as under federal.[2]

Second, it is likewise not true that, "The decision in this case holds that state courts . . . are not limited in their power to define contempt by the provisions of the Constitution of the United States . . ." (Petition, p. 6).

In the leading Georgia case of **McGill v. State**, 209 Ga. 500, 74 S. E. 2d 78 (1950), the Georgia Supreme Court recognized as controlling authority, the decisions of this

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[1] Ga. Code Ann., Sec. 34-9907. See Appendix.

[2] 18 U. S. C. A. 597. See Appendix.

Court establishing "clear and present danger" as the rule of decision in contempt cases. The common law "scandalizing the court" test was expressly rejected.[3]

Even prior to this Court's decision in **Bridges v. California**, 314 U. S. 252, 86 L. Ed. 192 (1944), the Georgia Court of Appeals had held in 1936 that, "There is a distinction between acts which consist of publications, or otherwise, not made in the presence of the court, which merely evince disrespect or contempt for the court or judge, **and acts of such character which interfere with or obstruct the administration of justice** . . ."[4]

In the present case, the amended application for contempt averred in each count that the conduct complained of "did thereby create and present a clear, present and imminent danger to the investigation . . ." (R. 91). The decision of the Court of Appeals was predicated upon a finding of obstruction of the administration of justice, rather than a purpose to vindicate a wounded judicial conscience.

What this case does involve is a situation where, during a pending investigation by a grand jury into violations of state voting laws, a sheriff, an officer of court, issues a series of statements violently criticizing the judge's charge to the grand jury, and in effect re-charging the grand jury himself in such manner as to be calculated to impede, frustrate and obstruct the grand jury's assigned function.

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[3] 200 Ga. at 504

[4] Townsend v. State, 54 Ga. App. 627, 632, 188 S. E. 560 (1936) Other cases applying the same principle are Clark v. State, 90 Ga. App. 330, 83 S. E. 2d 45 (1954), and Adams v. State, 89 Ga. App. 882, 81 S. E. 2d 507 (1954), and see Atlanta Newspapers, Inc. v. State, 101 Ga. App. 105, 113 S. E. 2d 148 (1960), applying the clear and present danger rule.

As stated above, respondent does not deny the binding effect of **Bridges v. California,** supra; **Craig v. Harney,** 331 U. S. 367, 91 L. Ed. 1546 (1947), and **Pennekamp v. Florida,** 328 U. S. 331, 90 L. Ed. 1295 (1946).

But the manifest difference is that whereas all those cases involved either statements calculated **merely to influence the judge**[5] or else comments on judicial action **already taken,**[6] the present case concerns language uttered by a public officer in the court house calculated to influence the grand jury in an investigation which it was at that very moment considering. While a judge is "expected to be a man of ordinary firmness and character",[7] there is no such presumption as to jurors.[8] There has been no case to come before this Court subsequent to the Bridges case involving a jury trial,[9] unless it be **Maryland v. Baltimore Radio Show,** 338 U. S. 912, 94 L. Ed. 562 (1950) but even in that case, the trial was not in progress when the publication was made. This, of course, is not to say that the clear and present danger test does not apply to jury trials,[10] but obviously, it necessarily follows that what would not constitute such a danger in a non jury matter might well do so in a pending jury case. The complex system repre-

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[5] Bridges v. California; Craig v. Harney.

[6] Pennekamp v. Florida (328 U. S. at 348). See 41 Ill. L. R. 690 (1947).

[7] Justice Holmes in Toledo Newspaper Co. v. United States, 247 U. S. 402, 424, 62 L. Ed. 1186 (1918).

[8] See Comments, 90 U. Pa. L. R. 617 (1942); 19 N. Y. U. L. Q. 307, 310 (1942); 45 Mich. L. R. 513 (1947); "A Re-Examination of Bridges v. California", 23 Alb. L. R. 61 (1959).

[9] Notre Dame L. R. 165 (1959). See also concurring opinions of Justices Jackson and Frankfurter in Shepherd v. Florida, 341 U. S. 50, 55, 95 L. Ed. 740 (1951).

[10] 23 Alb. L. R. 61 (1959).

sented by the rules of evidence bear mute testimony to this fact.

"Clear and present danger" does not mean that "trials are like elections, to be won through the use of the meetinghall, the radio and the newspaper",[11] and,

> "It does not follow that public comment of every character upon pending trials or legal proceedings may be as free as a similar comment after complete disposal of the litigation."[12]

Moreover,

> "When a case is finished courts are subject to the same criticism as other people; but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."[13]

It is well settled that, "The grand jury is an arm of the Court, and its **in camera** proceedings constitute a judicial inquiry".[14] The grand jurors, bailiffs, marshals, and similar persons are officers of the Court and subject to discipline,[15] and in this respect, it is equally well-settled that

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[11] Bridges v. California, supra (314 U. S. at 271).

[12] Pennekamp v. Florida, supra (328 U. S. at 346).

[13] Patterson v. Colorado, 205 U. S. 454, 463, 51 L. Ed. 879 (1907).

[14] Levine v. United States, 362 U. S. 610, 4 L. Ed. 2d 989 (1960); U. S. v. Smyth, 104 F. Supp. 383 (D. C. Cal. 1952); Gates v. State, 73 Ga. App. 824, 38 S. E. 2d 311 (1946); Cook v. Sikes, 210 Ga. 722, 82 S. E. 2d 641 (1954).

[15] U. S. v. Smyth, supra; People ex rel. Rusch v. Levin, 305 Ill. App. 142, 26 N. E. 2d 895, 898 (1939), and see 4 Blackstone's Commentaries 283, declaring as one type of contempt, "Those committed by sheriffs, bailiffs, gaolers, and other officers of the Court.

it is contempt to communicate with or to attempt to influence a grand jury. **People v. Parker**, 397 Ill. 305, 74 N. E. 2d 528 (1947), aff'd, 334 U. S. 816, 92 L. Ed. 1747 (1948), noted, 39 Jour. Cr. L. 72 (1948); **People v. Parker**, 374 Ill. 524, 30 N. E. 2d 11 (1940); **People v. Doss**, 382 Ill. 307, 46 N. E. 2d 984, cert. den. 320 U. S. 762 (1943); **Hitzelberger v. State**, 173 Md. 435, 196 A. 288, 291 (1938); **People v. Severinghaus**, 313 Ill. 456, 145 N. E. 220 (1924); **12 Am. Jur. 403**, Sec. 21, and see 38 Jour. Cr. L. 43 (1947). As stated in **Dukes v. United States**, 90 F. 2d 840, 842 (C. A. 4th 1937), in upholding punishment by contempt against a private citizen under what is now 18 U. S. C. A. 1504, it was said:

> "And one who knowingly sends a letter to a grand jury which shows upon its face the intention that it shall be considered with respect to a pending case, cannot be heard to say that he did not attempt to influence the grand jury thereby, as the attempt to influence is inherent in the act of knowingly sending such a letter."

Of course in the present case, petitioner's conviction as to the letter was reversed below, but since he obviously knew that his statements would be read by the grand jury, the principle applies equally here.

The trial judge here had an unqualified right to charge the grand jury.[16]

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by abusing the process of the law, or deceiving the parties, by any acts of oppression, extortion, collusive behavior or culpable neglect of duty."

[16] See U. S. v. Smyth, where it was said: "He may give instructions which do not constitute precedents and which cannot be controlled or corrected by appellate courts. These may be political manifestos. They may be entirely erroneous. These may include cautions and admonitions to fit local conditions and guard against dangers which the judge believes exist at the moment." (pp. 202-3).

Even should it be assumed that the charge as given was wrong, petitioner can be adjudged in contempt for violating it. **United States v. United Mine Workers**, 330 U. S. 258, 294, 91 L. Ed. 884 (1947). Nor is truth a defense to a charge of the instant type. **Patterson v. Colorado**, 205 U. S. 454, 462, 51 L. Ed. 879 (1907).[17]

Aside from the foregoing, however, it is clear that the grand jury charge given here was entirely proper. The Georgia Code, Sec. 34-9907, differing little from 18 U. S. C. 597,[18] unquestionably authorized it.

The evil sought to be proscribed by this statute is not one of recent or infrequent vintage to the state of Georgia.[19] A leading scholar on the subject, now a professor of political science at Emory University, has well-stated the situation:

> "Vote selling and vote buying is found in elections in the State, and since 1929, this evil has increased in certain counties. Very few counties are free from

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[17] In this case, it was held: "In the next place, the rule applied to criminal libels applies yet more clearly to contempts. A publication likely to reach the eyes of a jury, declaring a witness in a pending cause a perjurer, would be none the less a contempt that it was true. It would tend to obstruct the administration of justice, because even a correct conclusion is not to be reached or helped in that way, if our system of trials is to be maintained. The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by outside influence, whether of private talk or public print" (p. 462).

[18] See Appendix.

[19] As early as 1896, Fulton County prohibited use of hired workers and hired carriages at primary elections. See the Atlanta Constitution, March 19, 1896. In his annual message to the Georgia General Assembly on October 24, 1900, Governor A. D. Candler deplored the evils of exploitation of Negro citizens by vote buyers, and called for additional legislation. See Ga. House Jour. 1900, p. 10.

this corrupt practice. William D. Upshaw in an election in old Campbell County accused the friends of his opponent of spending a large sum of money for votes in 1926. In the same county in 1928, a friend of one of the candidates stood near the polls with his pocketbook offering to buy votes. Not being successful, he went into one of the rural precincts to buy votes. A leading politician in Lee County in 1932, spent more than $100 buying votes for a friend who was a candidate for a county office. The price paid for votes varies in different counties of the State, and is often regulated by the interest manifested in an election. In 1932, votes sold for fifty cents in Terrell County, one dollar in Fulton, and five dollars in Lee County, while whiskey was exchanged for votes in Dougherty and Baker Counties. The average price is usually a dollar."[20]

More recently, within the past month, a Negro candidate for public office in Atlanta accused the Negro Voters League of receiving "a pocketful of money" for their endorsement of an opposing white candidate.[21]

Under our theory of government, the grand jury was entitled to consider the charge given it free from outside interference from **any** source, *a fortiori*, from court officers rendering pronouncements from the same building in which the jury was deliberating. The effect upon their minds was undoubtedly magnified by virtue of petitioner's peculiar, official position. Under Georgia law, sheriffs are required to "execute and return the processes and orders

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[20] Lynwood M. Holland, The Conduct of Elections in Georgia (1937), a Thesis submitted to Emory University, on file in the State Library.

[21] See the Atlanta Journal, September 12, 1961, p. 2.

of the courts" and "to attend by themselves or deputies, upon all sessions of the superior court."[22] It is a matter of common knowledge in Georgia that sheriffs attend upon grand juries, executing their subpoenas and other processes, assist in their investigations, and in general render such assistance to the court and grand juries as may be required.

Here, petitioner's remarks were actually read by the grand jury during the very time that it was considering the matter (R. 112). The statements were all released from the same court house in which the jury was deliberating, which is tantamount to "the presence of the court,"[23] aside from the fact that this Court's decision in **Nye v. United States**, 313 U. S. 33, 85 L. Ed. 1172 (1941), interpreting the "so near thereto" clause of 18 U. S. C. A. 401 as having a geographical connotation rather than a causal one, was merely a matter of statutory rather than constitutional interpretation.[24]

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[22] Ga. Code Ann., Sec. 24-2813, Appendix.

[23] Re Savin, 131 U. S. 267, 272, 33 L. Ed. 150 (1889), declaring that, "We are of opinion that, within the meaning of the statute, the court, at least when in session, is present in every part of the place set apart for its own use, and for the use of its officers, jurors and witnesses; and misbehavior anywhere in such place is misbehavior in the presence of the Court." See also, in accord, In re Chaifetz, 68 A. 2d 228 (D. C. Mun. Ct. of App. 1949); People v. Hagopian, 408 Ill. 618, 97 N. E. 2d 782 (1951); People v. Parker, 328 Ill. App. 46, 65 N. E. 2d 457 (1946), aff'd 333 U. S. 571; In re Caruba, 139 N. J. Eq. 404, 51 A. 2d 446, aff'd 55 A. 2d 289 (1947); In re Attachment for Contempt of Mack, 37 West. 127, 17 Som. 221; State v. Goff, 228 S. C. 17, 88 S. E. 2d 788 (1955).

[24] 30 Geo. L. J. 406, 408 (1942). In Atlanta Newspapers, Inc. v. State, 101 Ga. App. 105, 111, 113 S. E. 2d 148 (1960), the Court of Appeals of Georgia construed the "so near thereto" language of Ga. Code, Sec. 24-105 in accordance with this Court's interpretation of similar language in the Nye case, but in a later appearance of the case before the Georgia Supreme Court, the latter court in effect disapproved this interpretation. Atlanta Newspapers, Inc. v.

Obviously, the "clear and present danger" test operates differently upon a state official issuing press releases from the same building in which the grand jury is deliberating than it does upon a private citizen completely divorced from the Court. Nor does respondent perceive that the "substantial evil" and "high" degree of "imminence" established by **Bridges**[25] require a showing that immediately upon publication, the grand jury broke into open riot. The effect of such interference as involved here is almost incapable of precise measurement.[26] Nor does respondent construe the decisions of this court as requiring a psychoanalysis of each juror to determine the degree of influence exerted upon him. Suffice it to say that a fact-finding body of laymen was deliberating a matter. Petitioner, one of the officers charged with assisting them, undertook to interfere with and influence their actions contrary to the charge given them by the court—a charge which on its face was in accordance with state as well as federal law. In essence, there is no difference in principle than if petitioner had interrupted the judge during his charge in a jury trial, and undertook to take issue therewith. Petitioner's constitutional rights of freedom of speech do not extend to empowering him to take over a court of law and supplant the trial judge.

State, 216 Ga. 309, 116 S. E. 2d 580 (1960). See 14 Vand. L. R. 1013 (1961). Moreover, in Green v. United States, 356 U. S. 165, 2 L. Ed. 2d 672 (1958), this court seems to have revived in the federal system the idea of the inherent contempt power.

[25] 314 U. S. at 262-263.

[26] Cf. Craig v. Harney, supra (331 U. S. at 392).

CONCLUSION.

The writ should be denied.

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APPENDIX.

GEORGIA CONSTITUTIONAL AND STATUTORY PROVISIONS.

1. Georgia constitution of 1945, Art. I, Sec. I, Par. XX (Ga. Code Ann. Sec. 2-120). **Contempts.** The power of the courts to punish for contempt shall be limited by legislative acts.

2. Georgia Code Ann., Sec. 34-9907. **Buying or selling votes, and voting illegally; competency of witnesses.**—If any person shall:

1. Buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof; or

(Cobb, 819. Acts 1880-1, p. 129; 1906, p. 46.)

2. If any person shall vote at any such election who has not resided in this state one year next preceding such election; or

(Acts 1878-9, p. 157.)

3. Who has not resided six months next preceding said election in the county in which he has voted; or

(Acts 1878-9, p. 157.)

4. (Repealed.)

5. Who has been convicted in any court of competent jurisdiction of treason against the state, of embezzlement of public funds, malpractice in office, bribery, or larceny, or any crime involving moral turpitude punishable by the laws of this State with imprisonment in the penitentiary, unless he shall have been pardoned,

(Acts 1878-9, p. 157.)

He shall be guilty of a misdemeanor.

On the trial of any person for offending against this section, any other person who may have participated in any violation of the provisions of the same shall be a competent witness and be compelled to give evidence; and nothing then said by such witness shall, at any time, be received or given in evidence against him in any prosecution, except on an indictment for perjury in any matter to which he may have testified. All the provisions of this section shall be applicable, so far as the same may be, to all primary elections. **The hiring of workers qualified to vote in said election or primary before or on the day of election, for the purpose of canvassing for or influencing votes in behalf of any candidate, or the being hired for said purpose, shall be a misdemeanor** (Acts 1906, p. 46).

3. Section 34-1907.1 (Supp.) **Printing, having, or possessing ballot or likeness thereof.**—No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting (Acts 1949, pp. 1291, 1293).

Section 24-104. **Powers of Courts enumerated.** Every Court has power—

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings.

2. To enforce order before a person or body empowered to conduct a judicial investigation under its authority.

3. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding therein.

4. To control, in furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

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5. To administer oaths in an action or proceeding pending therein, and in all other cases, when it may be necessary in the exercise of its powers and duties.

4. Section 24-105. **Powers of Courts to punish for contempt.** The powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of misbehavior of any person or persons in the presence of said courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance of any officer of said courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the said courts:

1. Provided, that in no case shall any person be imprisoned for contempt for failing or refusing to pay over money under any order, decree, or judgment of any court of law or any other court of this State, when he denies that the money ordered or decreed to be paid over is in his power, custody, or control, until he has a trial by jury as herein provided.

2. The allegation of the plaintiff, receiver, referee, or any other person or persons that the defendant has a certain sum of money within his power, custody, or control, which he is withholding or refuses or fails to pay over, and the denial of the defendant that he has the power, custody or control of said money, shall form the issue to be tried by the jury, and the jury shall pass upon the fact.

3. The judge presiding shall cause questions to be propounded in writing to the jury, and every question propounded shall be answered by the jury in their verdict; and upon the answers made the judge shall adjudge or decree whether the defendant be or not in contempt, with the right to either party to move for a new trial and carry the case to the Supreme Court by bill of exceptions as in other civil cases.

4. The issue being made, a bond may be required in the discretion of the court for the appearance of the defendant for trial, which bond shall be of sufficient size to procure the attendance of defendant to appear and answer the final judgment or decree in the case, which shall be approved by the judge, and on failure to appear the bond shall be forfeited as in criminal cases, and in default of bond the defendant may be committed to jail for safekeeping until trial. (Acts 1892, p. 65.)

5. Section 24-2813. **Duties of Sheriffs.** It is the duty of the sheriff—(Act 1799, Cobb, 574, Act 1810, Cobb, 577, Act 1818, Cobb, 858. Act 1820, Cobb, 480, Act 1823, Cobb, 512. Acts 1853-4, p. 28.)

1. To execute and return the processes and orders of the courts, and of officers of competent authority, if not void, with due diligence, when delivered to them for that purpose, according to the provisions of this Code.

2. To attend, by themselves, or deputies, upon all sessions of the superior court of the county, and the court of ordinary whenever required by the ordinary, and never to leave said courts while in session without the presence of one or both of said officers, if required, and to attend in like manner at the place of holding

an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under their charge all under-officers present, as police to preserve order.

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6. Section 24-2814. **Defaulting sheriffs or deputies; contempt of court; Removal.**—If any sheriff or deputy fails to comply with the provisions of section 24-2813, he shall be fined for a contempt, as the clerk of the superior court is in similar cases. Section 24-2724, as to removal, shall also apply to sheriffs.

7. Section 59-304. **Duties of Grand Jury.** Grand jurors are bound only to notice or make presentments of such offenses as may or shall come to their knowledge or observation after they shall have been sworn; nevertheless they have the right and power, and it is their duty as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time, which are not barred by the statute of limitations. (Cobb, 553.)

FEDERAL STATUTORY PROVISIONS.

8. Section 18, U. S. C. 401—**Contempt.**

"A Court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

9. Section 18, U. S. C. 1504. **Influencing grand or petit jurors.**

Whoever attempts to influence the action or decision of any grand or petit jurors of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member, or pertaining to his duties, by writing or sending to him any written communication, in relation to such issue or matter, shall be fined not more than $1,000.00, or imprisoned not more than six months, or both.

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury.

10. Section 18, U. S. C. 597. **Influencing Voters.**

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote.

Shall be fined not more than $1,000.00 or imprisoned not more than one year or both; and if the violation was wilful, shall be fined not more than $10,000, or imprisoned not more than two years, or both."